

MARCELINO S. BUL-LONG (NOW DECEASED), CARMEN D. CORDOVA (NOW DECEASED) AND WILMA T. BOMOWEY, TERIO B. KENIS, CAROLINE P. BADECAO, DALEN L. PAYDOAN, AMELIA N. BINAYAT, JUNALYN D....

Ponente: SADANG, J.

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SADANG, J.:

This is an appeal from the Order[1] dated March 25, 2009 of the Regional Trial Court (RTC) of Abatan, Buguias, Benguet, Branch 64, in Civil Case No. 6408-CV-098, which dismissed plaintiffs-appellants' Petition[2] for lack of cause of action.

Antecedents of the Appeal

On January 30, 2008, plaintiffs-appellants[3] (hereafter, appellants), as constituents of Buguias, Benguet, filed in the RTC a Petition[4] against defendants-appellees Municipal Government of Buguias, Benguet (MG-Buguias, for brevity), represented by its elected officials and department heads, for the declaration of nullity of Municipal Tax Ordinance No. 03, series of 1998 (MTO 03-98) and the refund of taxes paid thereunder. They prayed for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction.

Appellants alleged that the illegality of MTO 03-98 was discovered in December 2006 when the Municipal Treasurer of Buguias started to impose on the vendors of Abatan Open Gym the amount of P10.00 per basket/sack a day on their goods, allegedly pursuant to said ordinance over and above the daily cash ticket ranging from P5.00 to P300.00 and the annual permits and licenses. Based on their research, it appeared that on September 4, 1998, the Sangguniang Bayan of Buguias (SB, for brevity) approved MTO 03-98. On February 18, 2000, the Provincial Legal Office of Benguet (PLO) favorably endorsed the ordinance to the Sangguniang Panlalawigan of Benguet (SP, for brevity). On March 15, 2000, the SP passed Resolution No. 00-173[5] accepting the recommendation of the PLO and giving favorable review of MTO 03-98. Thereafter, the group of Atty. Severino Manuel Lumiqued and Concepcion Dangpa-Subangan submitted a letter[6] to the SP to withdraw its endorsement of the ordinance on the ground that the requirements of hearing and publication were not complied with. The SP returned the ordinance to the SB for correction but nothing was done thereafter; however, the ordinance became the basis of taxation in Buguias.

Appellants alleged that: MTO 03-98 never became a law because there was no publication and public hearings; it provides for many penal sanctions and was not thoroughly studied as shown by the fact that it contains provisions which do not apply to Buguias and is full of grammatical and typographical errors; there are no official records showing compliance with Section 187 and Article 276 of R.A. 7160 (Local Government Code) on public hearings and publication of tax ordinances.

On February 20, 2008, the RTC issued a TRO[7] enjoining the implementation of MTO 03-98. The RTC granted the TRO after it found in the record Resolution No. 168-2000[8] of the SB, dated December 29, 2000, which urged Mayor Bay-an to suspend implementation of some provisions of MTO 03-98 "for Current Year 2001 until

such time that the Committee on Taxation would come up with their final recommendations on the proposal of the petitioners."

MG-Buguias filed an Urgent Motion for Reconsideration[9] of the issuance of the TRO contending that the suspension of MTO 03-98 was only for 2001. Further, the resolution contains no directive for its implementation and contravenes a valid tax ordinance.

Appellants filed an Opposition to Defendant's Motion for Reconsideration[10] contending that Resolution 168-2000 is still good law.

In a Resolution,[11] dated February 27, 2008, the lower court granted the Motion for Reconsideration of MG-Buguias and lifted the TRO.

On March 11, 2008, the MG-Buguias filed its Answer[12] averring that: MTO 03-98 became a law when it was enacted by the SB in 1998 and took effect on January 2, 1999 upon approval by the SP, hence, there was legal basis to enforce it; public hearings were conducted and notices thereof were posted and sent to interested parties as shown by the November 12, 1998 Minutes of the Regular Meeting[13] of the SB and the November 20, 1998 Minutes of the Public Hearing.[14]

By way of opposition to the application for TRO and preliminary injunction, MG-Buguias reiterated that the requirements of law for the enactment of MTO 03-98 were complied with and that the issuance of a TRO would jeopardize and paralyze the municipality. MG-Buguias cited Sec. 187 of RA No. 7160 which provides that pending an action questioning the legality of a tax ordinance, the effectivity thereof shall not be suspended.[15]

As affirmative defense, MG-Buguias alleged that: it complied with the hearing and posting requirements; at its regular session on December 3, 1998, the SB unanimously approved the ordinance and during the period of one (1) month from said approval, no one questioned it; a Notice of Public Hearing[16] was issued to all barangay captains, owners of stores and business establishment, NGOs, and others setting the hearing on November 20, 1998, 9 AM at the Municipal Hall, Abatan, Buguias;[17] the SB resorted to posting in lieu of publication because there were no registered newspapers of local circulation in Buguias in 1998;[18] copies of MTO 03-98 were posted[19] in four conspicuous places on December 7, 1998, namely, the main lobby of the Municipal Hall, main entrance of the SB Hall, Buguias Police Station, and Barangay Hall of Loo, Buguias; letters of invitation, together with copies of the proposed tax ordinance were also sent to barangay officials, non-government organizations, owners of stores and business establishments requiring them to attend the public hearing; on November 20, 1998, MTO 03-98 was referred to the SP for review;[20] upon favorable recommendation of the PLO,[21] the SP, on March 15, 2000, passed Resolution No. 00-173[22] approving the ordinance; on June 30, 2000, concerned stall owners sent a letter to the SP asking for the recall of the ordinance; the SP, per Resolution No. 00-496[23] referred the letter to the SB for comment but did not suspend the implementation of MTO 03-98; the letter was intended for harassment because appellant Bul-long, being a lawyer and former executive assistant of then Vice-Governor Robert Tindaan could have easily advised Tindaan and the SP not to approve the tax ordinance.[24]

By way of motion to dismiss, MG-Buguias alleged that under Section 187 of RA No. 7160, any question on the constitutionality or legality of tax ordinances may be raised on appeal within 30 days from the effectivity of the tax ordinance to the Secretary of Justice, which appellants failed to do.[25] As counterclaim, MG-Buguias averred that the complaint had caused waste of public funds and official time for which it seeks P2million as damages.[26]

Appellants filed an "Opposition to Defendants' Motion to Dismiss with Special Prayer before the Honorable Court

to take Judicial Notice of the On-Going Revision of the Subject Ordinance." [27]

On June 25, 2008, the SB-Buguias passed Municipal Ordinance No. 2008-17, [28] otherwise known as "Buguias Municipal Revenue Code Revised 2008" (MO 2008-17) to take effect on October 1, 2008 and to supersede previous ordinances.

On January 19, 2009, MG-Buguias filed a Motion to Dismiss [29] on the ground that appellants' action for declaration of nullity of MTO 03-98 had been mooted with the passage of MO 2008-17.

Appellants filed a "Vehement Opposition to Defendants' Second Motion to Dismiss" [30] alleging that MO 2008-17 never became a law as it was referred by the SP to the Joint Committee on Ways and Means and Legal Matters pending a committee report to the plenary [31] and that the validity of MTO 03-98 must first be resolved because if it is declared null and void it follows that MO 2008-17 is also null and void.

MG-Buguias filed a Rejoinder with Motion to Admit [32] to which appellants filed a Reply to the Rejoinder. [33] MG-Buguias filed Comment (to the Reply to the Rejoinder). [34]

In the Order [35] dated March 25, 2009, the lower court granted MG-Buguias' Motion to Dismiss and dismissed the Petition for lack of cause of action.

Appellants filed a Motion for Reconsideration [36] but it was denied in an Order [37] dated July 14, 2009, without prejudice to appellants' right to assail MO 2008-17 if it still contains defects and unjust provisions.

In this appeal, appellants raise the following:

MAIN ISSUE

WHETHER OR NOT APPELLANTS' CAUSE OF ACTION BECAME MOOT AND ACADEMIC BY VIRTUE OF THE PASSAGE OF A NEW TAX ORDINANCE.

SUB-ISSUES

- WHETHER OR NOT THE COURT A QUO CORRECTLY INTERPRETED SB RESOLUTION NO. 168-2000 AND SB RESOLUTION NO. 2008-044 AS ITS BASIS IN LIFTING THE TEMPORARY RESTRAINING ORDER AND IN RULING THAT TAX ORDINANCE 03-98 WAS SUSPENDED FOR THE YEAR 2001 ONLY; and
- WHETHER OR NOT TAX ORDINANCE 2008-17 IS VALID.

ASSIGNMENT OF ERRORS

- THE LOWER COURT ERRED IN RULING THAT THE CHALLENGED ORDINANCE (TAX ORDINANCE 03-98) WAS SUSPENDED FOR THE YEAR 2001 ONLY:
- THE LOWER COURT ERRED IN RULING THAT THE NEW MUNICIPAL TAX ORDINANCE [NO. 2008-17] WAS VALID; [AND]
- THE LOWER COURT ERRED IN RULING THAT APPELLANTS' ACTION BECAME MOOT AND ACADEMIC. [38]

Appellees filed their Appellees' Brief [39] to which appellants filed a Reply. [40]

RULING

The appeal is not impressed with merit.

Appellants contend that the lower court did not resolve the issue of whether MTO 03-98 was suspended only for

the year 2001. They argue that whether said ordinance "remains suspended to date" will determine if MG-Buguias validly taxed the people and whether the local officials are administratively liable. The contention is untenable.

Records show that MTO 03-98 was approved by the SP through Resolution No. 00-173; however, in view of the letters of concerned citizens, the SP, by Resolution No. 046, referred the matter to the SB for comment. Thereafter, the SB passed Resolution No. 168-2000 suspending implementation of the tax ordinance "for Current Year 2001 until such time that the Committee on Taxation would come up with their final recommendations on the proposal of the petitioners."

We sustain the contention of MG-Buguias that the suspension of MTO 03-98 was only for 2001 and that the committee on taxation should have submitted its recommendation on the proposal of the concerned citizens within that year. Records show that on February 21, 2008, the SB passed Resolution No. 2008-044.[41] It appears from the whereas clauses of this resolution that Councilor Lesino, having been called upon by the SB to shed light on the issue, explained that "whether or not the assigned committee would come up with the recommendation or not within 2001, it is deemed understood that the resolution (Resolution 168-2000) has no bearing or effects anymore after December 31, 2001;" thus, the SB resolved to inform Mayor Bayacsan that Resolution No. 168-2000 "has no effect to Municipal Ordinance No. 03-98 after the end of year 2001." Considering that the legislative body that passed Resolution No. 168-2000 had interpreted its own ordinance, it is not for the lower court, or this Court, to second guess the legislative intent or meaning. Moreover, the records show that appellants did not question the ordinance via an appeal to the Secretary of Justice within 30 days from its approval by the SP. And even if they did, that would not have suspended the effectivity of said ordinance. Section 187 of RA No. 7160 clearly provides that pending an action questioning the legality of a tax ordinance, the effectivity thereof shall not be suspended. As the suspension of MTO 03-98 was only for 2001, it follows that it became effective after that year. It must also be noted in this regard, that there is nothing in the record to show that the SP recalled its approval of the ordinance.

Appellants contend that MO 2008-17 is procedurally infirm because the mandatory publication should have been done after said ordinance was approved by the SP "even if the SP had approved the ordinance in toto for it does not make sense for the law to require a review by a higher authority." They contend that MG-Buguias did not comply with Sections 188 and 511 of R.A. 7160 which, read together, mandate a two-time publication/ posting of a tax ordinance. We are not persuaded.

We quote the pertinent provisions of R.A. 7160, thus:

Section 187 also provides:

Section 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings. — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided further, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction. (Underscoring supplied).

Section 188. Publication of Tax Ordinances and Revenue Measures. — Within ten (10) days after their approval, certified true copies of all provincial, city, and municipal tax ordinances or revenue measures shall

be published in full for three (3) consecutive days in a newspaper of local circulation: Provided, however, That in provinces, cities and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places. (Underscoring supplied).

Section 511. Posting and Publication of Ordinances with Penal Sanctions. (a) Ordinances with penal sanctions shall be posted at prominent places in the provincial capitol, city, municipal or barangay hall, as the case may be, for a minimum period of three (3) consecutive weeks. Such ordinances shall also be published in a newspaper of general circulation, where available, within the territorial jurisdiction of the local government unit concerned, except in the case of barangay ordinances. Unless otherwise provided therein, said ordinances shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later. (Underscoring supplied).

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(c) The secretary to the sanggunian concerned shall transmit official copies of such ordinances to the chief executive officer of the Official Gazette within seven (7) days following the approval of the said ordinances for publication purposes. The Official Gazette may publish ordinances with penal sanctions for archival and reference purposes. (Underscoring supplied).

There is nothing in the texts of Sections 187 and 188 that requires a "two-time posting/publication" of a tax ordinance, as urged by appellants. The law simply requires that there be public hearings prior to the approval of a tax ordinance by the SB and that the tax ordinance is published within ten (10) days from its approval in a newspaper of local circulation or, in the absence of such newspaper, that it be posted in three (3) conspicuous and publicly accessible places. There is no requirement that the tax ordinance approved by the SB shall be published again after it is approved by the SP.

There can be no question that apart from the requirements of posting and publication in a newspaper of general circulation, Section 511 also mandates that the secretary of the sanggunian shall send a copy of the approved ordinance to the Official Gazette for purposes of publication. However, as correctly contended by the MB-Buguias, it is clear from the text of Section 511 that this second publication, after approval, applies only to ordinances with penal sanctions. It does not apply to a tax ordinance.

It is well to state, that under Section 468, paragraph (1) (i), of RA 7160, the SP shall "review all ordinances approved by the sanggunian of component cities and municipalities and executive orders issued by the mayors of said component units to determine whether these are within the scope of the prescribed powers of the sanggunian and of the mayor." Clearly, the only ground upon which the SP may declare invalid a tax ordinance is when it is beyond the powers conferred upon the SB.[42] This is not the ground relied upon by the concerned vendors in assailing MTO 03-98. What they alleged is that the taxes imposed by the ordinance is unjust, excessive, and oppressive. This is a legal and constitutional issue that should have been raised to the Secretary of Justice via an appeal pursuant to Section 187 of RA 7160. However, as there was no question as to the power of the SB to enact MTO 03-98, the SP approved the recommendation of the PLO that the ordinance is valid. Inasmuch as MTO 03-98 was approved by the SB, by Mayor Bay-an and the SP and, as shown by the records, the requirements of prior public hearing, posting and publication were complied with, said tax ordinance is valid.

Appellants contend that the lower court did not rule on the substantive flaws of MO 2008-17 which provided for a tax increase of 25% and 10% once every 5 years. They cite Section 130 and 186 of RA 7160 which prohibits unjust, excessive and oppressive taxes. Unfortunately, the instant appeal is not the proper recourse to raise this issue. To reiterate, Section 187 clearly provides that the issue of legality or constitutionality of a tax ordinance should be raised via an appeal to the Secretary of Justice within thirty (30) days from its effectivity.

It bears to stress, that the power to tax is the most effective instrument to raise needed revenues to finance and

support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. The failure of appellants to appeal to the Secretary of Justice within the prescribed period is fatal to their cause.[43]

The position of MG-Buguias that there was an implied repeal must be sustained. The repealing clause of MO 2008-17, Section 9.03, provides that "(a)ll ordinances, rules and regulations or part thereof, in conflict with, or inconsistent with any provisions of this Ordinance are hereby repealed or modified accordingly." We agree with the finding of the lower court that this clause effectively repealed MTO 03-98. The wording of the ordinance is broad and sweeping enough to include MTO 03-98. There is also no dispute that MTO 03-98 is inconsistent with MO 2008-17. If it were the intention of the SB to exclude from the new ordinance any existing tax ordinance, then it should have so stated in the repealing clause.

Finally, there is no merit in the contention of appellants that the lower court erred in ruling that their action has become moot with the passage of MO 2008-17. Appellants' cause of action is clearly the alleged nullity of MTO 03-98. It is only said ordinance that they assailed. The record does not show that they amended their Petition in the court a quo to include as cause of action the nullity of MO 2008-17. Consequently, the repeal of MTO 03-98 by MO 2008-17 had rendered appellants' cause of action moot.[44]

WHEREFORE, the appeal is DENIED. The Order dated March 25, 2009 of the Regional Trial Court of Abatan, Buguias, Benguet, Branch 64, in Civil Case No. 6408-CV-098, which dismissed appellants' complaint is AFFIRMED.

SO ORDERED.

Librea-Leagogo, (Chairperson), and Diamante, JJ., concur.

[1] Penned by Presiding Judge Agapito K. Laoagan, Jr., Rollo, pp. 25-29.

[2] Id. at 2-26.

[3] The plaintiffs-appellants state their legal standing in filing the present petition as follows: Marcelino S. Bul-Long and Carmen D. Cordova are entrepreneurs in Buguias, Benguet. They are now both deceased per declaration in the Appellants' Brief, id. at 88; however, no death certificates were submitted to establish the fact of their death nor was there a motion for substitution of the deceased appellants by their heirs.

Wilma T. Bomowey, Terio B. Kenis, Caroline P. Badecao, Dalen L. Paydoan, Amelia N. Binayat, Junalyn D. Domiclong, Esberta B. Tayaban, Nenita C. Capacap, and Prima B. Antalan are Officers and Members of the Abatan Open Gym Bagsakan Vendors Association, a juridical entity covered by SEC Registration No. CN200527855, id. at 27.

[4] Id. at 2-26.

[5] Entitled, "Accepting the Report/Adopting the Recommendation of the PLOB and Giving Favorable Review on Municipal Tax Ordinance No. 03, s. 1998, Otherwise Known as the 1998 Revised Buguias Revenue Code", Record, pp. 407-408.

[6] Exhibit H-1, Record, pp. 274-277; Exhibit H-2, id. at 278-282.

[7] Id. at 425-427.

- [8] Exh. "J," id. at 335.
- [9] Id. at 431-446.
- [10] Id. at 458-466.
- [11] Id. at 468-470.
- [12] Id. at 495-501.
- [13] Annex "6" of Answer, id. at 536-538.
- [14] Annex "5" of Answer, id. at 532-535.
- [15] Id. at 502-504.
- [16] Exh. "10" (TRO), id. at 417; Exh. "11" (TRO), id. at 417a.
- [17] Id. at 504-505.
- [18] Annex "11" of Answer and Exh "1" (TRO), id. at 547.
- [19] Exh. "W" and Exh. "9" (TRO), id. at 415; Exh. "X," id. at 416.
- [20] Exh. "R" and Exh. "12" (TRO), id. at 418-420; Exh. "S" and Exh. "2" (TRO), id. at 402-405.
- [21] Exh. "T" and Exh. "13" (TRO), id. at 421-424.
- [22] Entitled "Accepting the Report/Adopting the Recommendation of the Provincial Legal Office and Giving Favorable Review on Municipal Tax Ordinance No. 03, s. 1998, Otherwise Known as the 1998 Revised Buguias Revenue Code," Exh. "D" and Exh. "4" (TRO), id. at 407-408.
- [23] Exh. "G," id. at 271-272.
- [24] Id. at 504-511.
- [25] Id. at 511-514.
- [26] Id. at 514-515.
- [27] Id. at 558-586.
- [28] Entitled "An Ordinance Revising Municipal Ordinance No. 03-98 To Be Known As Municipal Revenue Code of Buguias Revised 2008," Exh. "1" (Motion to Dismiss) and Exh. "B" (Opposition to Motion to Dismiss), id. at 760-849.
- [29] RTC Records (Book II), pp. 743-746.
- [30] The pleading filed is id. at 910-914.
- [31] Certification dated January 20, 2009, issued by Frenzel A. Ayong, Secretary to the Sanggunian Exh. "A," (Opposition to Motion to Dismiss), id. at 915.
- [32] Id. at 917-926.
- [33] Id. at 943-945.
- [34] Id. at 960-963.

[35] Supra note 1.

[36] RTC Records (Book II), pp. 975-983. Appellees filed their "Comment and/or Opposition to the Motion for Reconsideration of Plaintiff," id. at 987-991.

[37] Id. at 30-36.

[38] Id. at 7.

[39] Id. at 204-212.

[40] Id. at 272-275.

[41] Entitled "Resolution Informing the Municipal Mayor, Hon. Felicio K. Bayacsan That Res. No. 168-2000, Dated December 29, 2000 Entitled 'Resolution Urging the Municipal Mayor, Hon. Domingo Bay-an, to Suspend the Implementation of Some Provisions of the New Municipal Tax Code for Current Year 2001 Until Such Time that Committee on Taxation Would Come Up with Their Final Recommendations on the Counter Proposals of the Petitioners' Has No Effect to Municipal Ordinance No. 03-98 After the End of Year 2001," Exh. "P," id. at 447-448.

[42] *Moday v. Court of Appeals*, 268 SCRA 586, 594, citing *Gabriel v. Provincial Board of Pampanga*, 50 Phil. 686.

[43] *Reyes v. Court of Appeals*, G.R. No. 118233, December 10, 1999 (Citations omitted).

[44] *Lopez v. City of Manila*, G.R. No. 127139, February 19, 1999, 303 SCRA 448.

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